

manufacturer will be allowed to carry over a negative credit balance until December 31, 2002. As of these dates, the summation of the manufacturer's projected balance of all NMHC+NO_x credit transactions and the summation of the manufacturer's projected balance of all PM credit transactions must each be greater than or equal to zero.

(D) FELs for NMHC+NO_x and FELs for PM may not exceed the upper limits specified in § 89.112(d).

(E) An engine family certified to an FEL is subject to all provisions specified in this part, except that the applicable NMHC+NO_x FEL or PM FEL replaces the NMHC+NO_x emission standard or PM emission standard for the family participating in the averaging and banking program.

(F) A manufacturer of an engine family with an FEL exceeding the applicable emission standard must obtain emission credits sufficient to address the associated credit shortfall via averaging or banking. The exchange of emission credits generated under this program with other nonroad engine manufacturers in trading is not allowed.

(G) An engine family with an FEL below the applicable standard may generate emission credits for averaging, banking, or a combination thereof. Emission credits may not be used to offset an engine family's emissions that exceed its applicable FEL. Credits may not be used to remedy nonconformity determined by a Selective Enforcement Audit (SEA) or by recall (in-use) testing. However, in the case of an SEA failure, credits may be used to allow subsequent production of engines for the family in question if the manufacturer elects to recertify to a higher FEL.

(4)(i) Except as noted in paragraphs (c)(4)(ii), (c)(4)(iii), and (c)(4)(iv) of this section, credits generated in a given model year may be used during that model year or used in any subsequent model year. Except as allowed under paragraph (c)(3)(ii) of this section, credits generated in one model year may not be used for prior model years.

(ii) Credits generated from engines rated under 19 kW prior to the implementation date of the applicable Tier 2

standards, shall expire on December 31, 2007.

(iii) Credits generated from engines rated under 19 kW under the provisions of paragraph (c)(3)(ii) shall expire on December 31, 2003.

(iv) Credits generated from engines rated at or above 19 kW and under 37 kW under the provisions of paragraph (c)(3)(ii) of this section shall expire on December 31, 2002.

(5) Except as provided in paragraph (b)(3) of this section, engine families may not generate credits for one pollutant while also using credits for another pollutant in the same model year.

(d) Manufacturers must demonstrate compliance under the averaging, banking, and trading programs for a particular model year within 270 days of the end of the model year. Except as allowed under paragraph (c)(3)(ii) of this section, manufacturers that have certified engine families to FELs above the applicable emission standards and do not have sufficient emission credits to offset the difference between the emission standards and the FEL for such engine families will be in violation of the conditions of the certificate of conformity for such engine families. The certificates of conformity may be voided ab initio under § 89.126(c) for those engine families.

[63 FR 57006, Oct. 23, 1998]

§ 89.204 Averaging.

(a) *Requirements for Tier 1 engines rated at or above 37 kW.* A manufacturer may use averaging to offset an emission exceedance of a nonroad engine family caused by a NO_x FEL above the applicable emission standard. NO_x credits used in averaging may be obtained from credits generated by another engine family in the same model year, credits banked in a previous model year, or credits obtained through trading.

(b) *Requirements for Tier 2 and later engines rated at or above 37 kW and Tier 1 and later engines rated under 37 kW.* A manufacturer may use averaging to offset an emission exceedance of a nonroad engine family caused by an NMHC+NO_x FEL or a PM FEL above the applicable emission standard. Credits used in averaging may be obtained

from credits generated by another engine family in the same model year, credits banked in previous model years that have not expired, or credits obtained through trading. The use of credits shall be within the restrictions described in paragraph (c) of this section, § 89.206(b)(4) and § 89.203(b)(5)(ii).

(c) *Averaging sets for emission credits.* The averaging and trading of NO_x emission credits, NMHC + NO_x emission credits, and PM emissions credits will only be allowed between engine families in the same averaging set. The averaging sets for the averaging and trading of NO_x emission credits, NMHC + NO_x emission credits, and PM emission credits for nonroad engines are defined as follows:

(1) Eligible engines rated at or above 19 kW, other than marine diesel engines, constitute an averaging set.

(2) Eligible engines rated under 19 kW, other than marine diesel engines, constitute an averaging set.

(3) Marine diesel engines rated at or above 19 kW constitute an averaging set. Emission credits generated from marine diesel engines rated at or above 19 kW may be used to address credit shortfalls for eligible engines rated at or above 19 kW other than marine diesel engines.

(4) Marine diesel engines rated under 19 kW constitute an averaging set. Emission credits generated from marine diesel engines rated under 19 kW may be used to address credit shortfalls for eligible engines rated under 19 kW other than marine diesel engines.

[63 FR 57007, Oct. 23, 1998]

§ 89.205 Banking.

(a) *Requirements for Tier 1 engines rated at or above 37 kW.* (1) A manufacturer of a nonroad engine family with a NO_x FEL below the applicable standard for a given model year may bank credits in that model year for use in averaging and trading in any subsequent model year.

(2) A manufacturer of a nonroad engine family may bank NO_x credits up to one calendar year prior to the effective date of mandatory certification. Such engines must meet the requirements of subparts A, B, D, E, F, G, H, I, J, and K of this part.

(3)(i) A manufacturer of a nonroad engine family may bank PM credits from Tier 1 engines under the provisions specified in § 89.207(b) for use in averaging and trading in the Tier 2 or later timeframe.

(ii) Such engine families are subject to all provisions specified in subparts A, B, D, E, F, G, H, I, J, and K of this part, except that the applicable PM FEL replaces the PM emission standard for the family participating in the banking and trading program.

(b) *Requirements for Tier 2 and later engines rated at or above 37 kW and Tier 1 and later engines rated under 37 kW.* (1) A manufacturer of a nonroad engine family with an NMHC + NO_x FEL or a PM FEL below the applicable standard for a given model year may bank credits in that model year for use in averaging and trading in any following model year.

(2) For engine rated under 37 kW, a manufacturer of a nonroad engine family may bank credits prior to the effective date of mandatory certification. Such engines must meet the requirements of subparts A, B, D, E, F, G, H, I, J, and K of this part.

(c) A manufacturer may bank actual credits only after the end of the model year and after EPA has reviewed the manufacturer's end-of-year reports. During the model year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging in the end-of-year report and final report.

(d) Credits declared for banking from the previous model year that have not been reviewed by EPA may be used in averaging or trading transactions. However, such credits may be revoked at a later time following EPA review of the end-of-year report or any subsequent audit actions.

[63 FR 57008, Oct. 23, 1998]

§ 89.206 Trading.

(a) *Requirements for Tier 1 engines rated at or above 37 kW.* (1) A nonroad engine manufacturer may exchange emission credits with other nonroad engine manufacturers within the same averaging set in trading.